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12 CFR Ch. VII (1-1-02 Edition)

will be charged on the total combined payment.

[44 FR 27380, May 10, 1979, as amended at 50 FR 20745, May 20, 1985; 55 FR 1799, Jan. 19, 1990; 59 FR 33421, June 29, 1994; 60 FR 58503, Nov. 28, 1995]

§§ 701.7-701.13 [Reserved]

§ 701.14 Change in official or senior executive officer in credit unions that are newly chartered or are in troubled condition.

(a) *Statement of scope and purpose.* Section 212 of the Federal Credit Union Act (12 U.S.C. 1790a) sets forth conditions under which a credit union must notify NCUA in writing of any proposed changes in its board of directors, committee members or senior executive staff. The regulation only applies in cases of newly chartered credit unions and credit unions in troubled condition.

(b) *Definitions.* For the purposes of this section:

(1) *Committee member* means any individual who serves as an official of the credit union in the capacity of a credit committee member or supervisory committee member.

(2) *Senior executive officer* means a credit union's chief executive officer (typically this individual holds the title of president or treasurer/manager), any assistant chief executive officer (e.g., any assistant president, any vice president or any assistant treasurer/manager) and the chief financial officer (controller). The term "senior executive officer" also includes employees of an entity, such as a consulting firm, hired to perform the functions of positions covered by the regulation.

(3) Except as provided in paragraph (b)(4) of this section for corporate credit unions, "troubled condition" means any insured credit union that has one or a combination of the following conditions:

(i) Has been assigned

(A) A 4 or 5 Camel composite rating by the NCUA in the case of a federal credit union, or

(B) An equivalent 4 or 5 Camel composite rating by the state supervisor in the case of a federally insured, state-chartered credit union, or

(C) A 4 or 5 Camel composite rating by NCUA based on core workpapers received from the state supervisor in the case of a federally insured, state-chartered credit union in a state that does not use the Camel system. In this case, the state supervisor will be notified in writing by the Regional Director in the Region in which the credit union is located that the credit union has been designated by NCUA as a troubled institution;

(ii) Has been granted assistance as outlined under section 116 or 208 of the Federal Credit Union Act.

(4) In the case of a corporate credit union, "troubled condition" means any insured corporate credit union that has one or a combination of the following conditions:

(i) Has been assigned

(A) A 4 or 5 Corporate Risk Information System (CRIS) rating by NCUA in either the Financial Risk or Risk Management composites, in the case of a federal corporate credit union, or

(B) An equivalent 4 or 5 CRIS rating in either the Financial Risk or Risk Management composites by the state supervisor in the case of a federally insured, state-chartered corporate credit union in a state that has adopted the CRIS system, or an equivalent 4 or 5 CAMEL composite rating by the state supervisor in the case of a federally insured, state-chartered corporate credit union in a state that uses the CAMEL system, or

(C) A 4 or 5 CRIS rating in either the Financial Risk or Risk Management composites by NCUA based on core workpapers received from the state supervisor in the case of a federally insured, state-chartered credit union in a state that does not use either the CRIS or CAMEL system. In this case, the state supervisor will be notified in writing by the Director of the Office of Corporate Credit Unions that the corporate credit union has been designated by NCUA as a troubled institution;

(ii) Has been granted assistance as outlined under Sections 116 or 208 of the Federal Credit Union Act.

(c) *Prior notice requirement.* An insured credit union shall give NCUA written notice at least 30 days prior to

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the effective date of any addition or replacement of a member of the board of directors or committee member or the employment or change in responsibilities of any individual to a position as a senior executive officer if:

(1) The credit union has been chartered for less than 2 years; or

(2) The credit union meets the definition of troubled condition as set forth in paragraph 701.14(b)(3) or (4).

(d) *Procedures for notice of proposed change in official or senior executive officer.* (1) Filing and acceptance. Notices shall be filed with the appropriate Regional Director. In the case of a corporate credit union, notice shall be filed with the Director of the Office of Corporate Credit Unions. Additional references herein to Regional Director will, for corporate credit unions, mean the Director of the Office of Corporate Credit Unions. State-chartered federally insured credit unions shall also file a copy of the notice with their state supervisor. The notice shall contain information pertaining to the competence, experience, character, or integrity of the individual with respect to whom the notice is submitted, subject to the authority of the Regional Director or his or her designee to require additional information. The information submitted must include the identity, personal history, business background, and experience of the individual, including material business activities and affiliations during the past 5 years, and a description of any material pending legal or administrative proceedings in which the individual is a party and any criminal indictment or conviction of such person by a state or Federal court. Each individual on whose behalf the notice is filed must attest to the validity of the information filed. At the option of the individual, the information may be forwarded to the Regional Director by the individual; however, in such cases, the credit union must file a notice to that effect. Within ten calendar days after receiving the notice, the Regional Director will inform the credit union either that the notice is complete or that additional specified information is needed and must be submitted within 30 calendar days. If the initial notice is complete, the Regional Director will

issue a written decision of approval or disapproval to the individual and the credit union within 30 calendar days of receipt of the notice. If the initial notice is not complete, the Regional Director will issue a written decision within 30 calendar days of receipt of the original notice plus the amount of time taken by the credit union to provide the requested additional information. If the additional information is not submitted within 30 calendar days of the Regional Director's request, the Regional Director may either disapprove the proposed individual or review the notice based on the information provided. If the credit union and the individual have submitted all requested information and the Regional Director has not issued a written decision within the applicable time period, the individual is approved.

(2) Waiver of prior notice requirement. Parties may petition the appropriate Regional Director for a waiver of the prior notice required under this section. Waiver may be granted if it is found that delay could harm the credit union or the public interest. Any waiver shall not affect the authority of NCUA to issue a Notice of Disapproval within 30 days of the waiver, or within 30 days of any subsequent required notice.

(3) Election of directors or credit committee members. (i) In the case of the election of a new member of the board of directors or credit committee member at a meeting of the members of a federally insured credit union, prior notice is not required. However, a completed notice must be filed with the appropriate Regional Director within 48 hours of the election.

(ii) If a director or credit committee member is disapproved by NCUA, the board of directors of the credit union may appoint its own alternate, to serve until the next annual meeting, contingent upon NCUA approval.

(e) *Commencement of service.* A proposed director, committee member or senior executive officer may begin to serve temporarily until the credit union and the individual are notified in writing of NCUA's approval or disapproval of the proposed addition or employment.

(f) *Notice of disapproval.* NCUA may disapprove the individual's serving as a director, committee member or senior executive officer if it finds that the competence, experience, character, or integrity of the individual with respect to whom a notice under this section is submitted indicates that it would not be in the best interests of the members of the credit union or of the public to permit the individual to be employed by, or associated with, the credit union. The Notice of Disapproval will advise the parties of their rights of appeal pursuant to 12 CFR part 747 subpart J, of NCUA's Regulations.

[55 FR 43086, Oct. 26, 1990, as amended at 59 FR 36042, July 15, 1994; 60 FR 31911, June 19, 1995; 64 FR 28717, May 27, 1999]

EFFECTIVE DATE NOTE: At 66 FR 65624, Dec. 20, 2001, §701.14 was amended by revising paragraphs (b)(3)(ii) and (b)(4)(ii), effective Jan. 22, 2001. For the convenience of the user, the revised text is set forth as follows:

§ 701.14 Change in official or senior executive officer in credit unions that are newly chartered or are in troubled condition.

* * * * *

(b) * * *

(3) * * *

(ii) Has been granted assistance as outlined under sections 208 or 216 of the Federal Credit Union Act.

(4) * * *

(ii) Has been granted assistance as outlined under sections 208 or 216 of the Federal Credit Union Act.

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§§ 701.15–701.18 [Reserved]

§ 701.19 Retirement benefits for employees of Federal credit unions.

(a) A Federal credit union may make provision for reasonable retirement benefits for its employees and for officers who are compensated in conformance with the Act and the bylaws, either individually or collectively with other credit unions. In those cases where a Federal credit union is to be a plan trustee or custodian, the plan must be authorized and maintained in accordance with the provisions of part 724 of this chapter. Where the trustee or custodian is to a party other than the Federal credit union, the employee

benefit plan must be maintained in accordance with the applicable laws governing employee benefit plans and such rules and regulations as may be promulgated by the Secretary of Labor, the Secretary of the Treasury, or any other Federal or state authority exercising jurisdiction over such plans.

(b) No Federal credit union shall occupy the position of a fiduciary, as defined in the Employee Retirement Income Security Act of 1974 and rules and regulations promulgated thereunder by the Secretary of Labor, unless provision has been made for appropriate liability insurance as provided under section 410(b) of the Employee Retirement Income Security Act of 1974.

[40 FR 25582, June 17, 1975, as amended at 48 FR 55423, Dec. 13, 1983; 63 FR 14026, Mar. 24, 1998]

§ 701.20 [Reserved]

§ 701.21 Loans to members and lines of credit to members.

(a) *Statement of scope and purpose.* Section 701.21 complements the provisions of section 107(5) of the Federal Credit Union Act (12 U.S.C. 1757(5)) authorizing Federal credit unions to make loans to members and issue lines of credit (including credit cards) to members. Section 107(5) of the Act contains limitations on matters such as loan maturity, rate of interest, security, and prepayment penalties. Section 701.21 interprets and implements those provisions. In addition, §701.21 states the NCUA Board's intent concerning preemption of state laws, and expands the authority of Federal credit unions to enforce due-on-sale clauses in real property loans. Also, while §701.21 generally applies to Federal credit unions only, its provisions may be used by state-chartered credit unions with respect to alternative mortgage transactions in accordance with 12 U.S.C. 3801 *et seq.*, and certain provisions apply to loans made by federally insured state-chartered credit unions as specified in §741.203 of this chapter. Part 722 of this chapter sets forth requirements for appraisals for certain real estate secured loans made under §701.21 and any other applicable lending authority. Finally, it is noted that